INDEX

Page

Opinions below 1

Jurisdiction 2

Question presented 2

Statute involved 2

Statement 3

Argument 17

Conclusion 21

CITATIONS

CASES:

National Labor Relations Board v. *Pittsburgh S.S. Co.*, 340 U.S. 498 21

Reilly v. *Pincus*, 338 U.S. 269 20

United States v. *Gypsum Co.*, 333 U.S. 364 17

United States v. *Oregon Medical Society*, 343 U.S. 326 17

United States v. *Yellow Cab Co.*, 338 U.S. 338 17

STATUTES:

Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, 21 U.S.C. 301 *et seq.*:

Section 301 [21 U.S.C. 331] 2

Section 302 [21 U.S.C. 332] 3

Section 502(a) [21 U.S.C. 352(a)] 3

MISCELLANEOUS:

Rule 52(a), F.R.C.P. 2, 17

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 491

HOXSEY CANCER CLINIC, a partnership, and HARRY M. HOXSEY, an individual, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 1140-1147) is reported at 94 F. Supp. 464. The opinion of the Court of Appeals (R. 1157-1173) is reported at 198 F. 2d 273.

JURISDICTION

The judgment of the Court of Appeals was entered July 31, 1952 (R. 1173). A petition for rehearing was denied September 10, 1952 (R. 1194). The petition for a writ of certiorari was filed on December 8, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the Court of Appeals was precluded by Rule 52 (a), F.R.C.P., from reversing where on the entire evidence it was "left with a definite and firm conviction that a mistake [had] been committed" by the District Court in its finding that Mr. Hoxsey's medicines, taken orally, sometimes cure cancer.

STATUTE INVOLVED

The Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, 21 U.S.C. 301 *et seq.*, provides in pertinent part:

> Section 301 [21 U.S.C. 331]: The following acts and the causing thereof are hereby prohibited:
>
> (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

Section 502(a) [21 U.S.C. 352(a)] describes a drug as misbranded if its labeling is false or misleading in any particular. Section 302 [21 U.S.C. 332] vests the United States District Courts with jurisdiction, for cause shown, to restrain violations of Section 301(a).

STATEMENT

This litigation concerns the activities of the Hoxsey Cancer Clinic and Mr. Harry M. Hoxsey[1] who operate in Dallas, Texas. The petitioners hold themselves out as having a successful treatment for all types of cancer (Govt. Ex. 2, pp. 2, 5, 7). They claim (Govt. Ex. 14, p. 1) that the Hoxsey drugs were originated by Mr. Hoxsey's grandfather about 1840 in Kentucky, were later used by the defendant's father, and after his death in 1919 the treatment was carried on by Mr. Hoxsey in conjunction with doctors. Since 1946, Hoxsey has operated through J. B. Durkee, a licensed osteopath, who has the title of Medical Director (R. 902-903).

The United States sued under the Federal Food, Drug, and Cosmetic Act to enjoin the defendants from introducing the Hoxsey medicines into interstate commerce, alleging that the drugs were falsely represented by labeling to be effective cures for cancer in man (R. 3-6, 539).

---

[1] Harry M. Hoxsey is a layman, not a medical man. He did not testify at the trial.

The Medicines. The drugs involved are two liquid medicines.[2] One, a brownish-black mixture, contains in varying dilutions potassium iodide and extracts from cascara sagrada, common buckthorn, alfalfa, red clover blossom, northern prickly ash, and syrup of honey drip cane (R. 37-38, 40, 554-557, 569, 914, 977-979, 985-987, Govt. Ex. 11-12).[3] The other, a pink liquid, contains potassium iodide and lactate of pepsin (R. 567).[4]

The Labeling. The alleged false representations were made in two booklets, Govt. Ex. 2 and 14. The complaint charged that the drugs were misbranded because (1) the labeling, by general and specific statements, falsely represented that the medicines can and do cure cancer,[5] and (2) the

---

[2] In addition to the liquid medicines for internal cancers, petitioners have an escharotic powder consisting of a corrosive or caustic substance, the basic ingredient of which is arsenic (R. 998-999). The escharotic is applied directly to external cancers and burns off the affected tissue as well as any surrounding normal tissue that it contacts (R. 1117). That drug and external cancers are *not* involved in this case.

[3] Prickly ash and the laxatives, cascara sagrada and buckthorn, are sometimes omitted from the formula (R. 979, 1021-1022, 1025-1026).

[4] When the drugs are shipped direct to patients they are in dilute form. When shipped to practitioners they are in concentrate form in 16 ounce containers bearing directions that they be diluted with enough distilled water or elixir of lactate of pepsin, as the case may be, to make a gallon (R. 4, 38-39). Typical analyses appear at R. 71, 72, 73, 74, 75, 76, 79.

[5] See particularly the speech made by Dr. Durkee on October 17, 1947, reprinted in the booklets (Govt. Ex. 2, pp.

labeling falsely represented that the Hoxsey drugs had cured a number of persons whose testimonials and names appear in the booklets (R. 4-5). The labeling was before both courts below and is here for consideration as to the actual representations made.

The Government's Proof of False Claims. The allegation that the drugs have not cured, and cannot cure, cancer was proved in five ways. First, through experts in pharmacology and experimental therapeutics who were familiar with the pharmacology of the several ingredients in the medicines (R. 86-93, 102-108), it was proved that the ingredients alone and in combination have no effect in eliminating or retarding the growth of cancerous cells (R. 93). Indeed, it was shown that red clover blossom, northern prickly ash, and alfalfa are therapeutically inactive (R. 92-93), that the sugars in the mixtures would be active only for their food value (R. 92), that cascara sagrada and buckthorn act as laxatives (R. 91), and that potassium iodide increases, rather than retards, the growth rate of cancerous cells (R. 108).

Second, the Government produced the results of controlled animal experiments conducted at the

---

2-6; Govt. Ex. 14, pp. 4-8). This was about one year and a half after he became associated with the Hoxsey Cancer Clinic on a part-time basis (R. 902, 905). It purports to explain the Hoxsey treatment as "a revolutionary treatment" for cancer which produces better results than the orthodox methods, surgery and radiation.

Roscoe B. Jackson Memorial Laboratories, Bar Harbor, Maine, an institution engaged in fundamental research in the biology of cancer (R. 122-124), which established that the Hoxsey drugs had no beneficial effects on cancers in the afflicted animals (R. 126-132, 146). In the experiments, new tumors were observed on a number of animals and the malignant growths were larger at the end of each experiment than when it was begun (R. 131).

Third, the Government presented the testimony of an outstanding practitioner (R. 156-157) to explain the recognized and accepted methods of diagnosing and treating cancer (R. 156-157). Through this witness, it was proved that cancer can be diagnosed accurately only by a qualified pathologist who makes a biopsy examination of the suspect tissue (R. 158-159). It was proved also that the only ways of treating internal cancer known to medical science are surgery and radiation (R. 159), not by any medicine taken orally (R. 160).

Fourth, the Government presented 16 case histories wherein the Hoxsey medicines did not cure cancer. Nine of these people were named in the booklets as having been cured of cancer. A summary of these cases follows:

Mrs. Murray W. Baker, Gov. Ex. 14, p. 10. The booklet represents that she was successfully

treated by the Hoxsey drugs for cancer of the breast.

The facts are: In November 1945 Mrs. Baker was examined by a qualified physician and surgeon (R. 236, 248). It was ascertained after biopsy[6] that she had cancer of the breast (R. 256). The doctor recommended removal of the breast and X-ray. The patient did not follow this advice (R. 237, 249), but went to the Hoxsey Cancer Clinic and took the Hoxsey cancer medicines (R. 239). In April, 1950 Mrs. Baker went back to her doctor (R. 240, 250), and it was found that she had several new tumors in the breast and nodules in the axilla (or armpit) (R. 250). The breast, muscles and glands from the right chest together with all fat and gland structure in the armpit were removed (R. 250). Pathological examination of the tissue removed showed cancer of the breast with spreading to axilla and glands, the cancer being of the same type as in 1945 (R. 256-257).

A. O. Vinson, Gov. Ex. 2, p. 22. The pamphlet lists this patient as "Vincent" (R. 450). It includes a transcript of testimony alleged to have been given by this patient on February 2, 1947

[6] A biopsy is a diagnostic examination of a piece of tissue removed from a living subject. See The American Illustrated Medical Dictionary. It involves miscroscopic examination of the tissue by a trained pathologist and is the only certain means of diagnosing cancer (R. 158).

which suggests that the Hoxsey treatment resulted in his complete recovery from various cancers of the body.

The facts are: In November 1946 Dr. V. D. Goodall removed a tumor from the front of the patient's right ear; pathological examination showed it to be malignant melanoma (R. 449, 454). In February 1947 Mr. Vinson was under treatment at the Hoxsey Clinic (Gov. Ex. 2, pp. 13, 22) and stated that he felt that he was on the road to complete recovery. In April of 1947 Dr. Francis Leon Ware took a piece of bone tissue from the patient's right tibia (the large bone of the leg, below the knee) (R. 455-456) which was examined pathologically. The findings were malignant melanoma and metastasis to the bone. The cancer, which originated in the skin, had been carried and set up a new tumor (R. 456-457). He was under Dr. Durkee's care for at least 3 years. In February, 1950 Dr. Durkee sent him to Dr. Keith Lowell, an osteopathic physician, who diagnosed the condition as melanoma of right ankle and leg and amputated the leg just above the knee (R. 459-460, 929). Pathological examination showed the condition to be malignant melanoma which had originated in another part of the body and had spread (R. 463-464).[7]

---

[7] An official document shows that Vinson died after the trial, on Feb. 20, 1951, of a malignancy of 4 years duration. Texas Department of Health Bureau of Vital Statistics, Certificate of Death State File No. 8372.

Mrs. Emma Doyle, Gov. Ex. 14, p. 10. The booklet represents that this patient was successfully treated by the Hoxsey treatment for cancer of the uterus. The facts are: In February, 1943 Mrs. Doyle was suffering from vaginal trouble which Dr. W. P. Lowery, her physician, diagnosed after biopsy as cancer of the uterus (R. 290, 297, 302). She was advised to have the uterus removed but she did not have it done at that time (R. 298). In March, 1943 she went to the Hoxsey Cancer Clinic and took the Hoxsey medicine for several years, until about 1945 or 1946 (R. 291, 293). In December, 1946 she again went to Dr. Lowery with the same uterine complaint and after examination Dr. Lowery removed the entire uterus (R. 298). There was more bleeding at that time than in 1943 and the size of the uterus with the mass had increased (R. 298-299). Pathological examination in 1947 showed advanced cancer of the uterus whereas in 1943 the condition was early cancer (R. 302-303).

Horace F. Irwin, Gov. Ex. 2, pp. 32-34. The booklet contains a transcript of testimony which was given on February 2, 1947. This suggests that the patient had cancer of the throat, that after three weeks of the Hoxsey treatment there had been considerable improvement and that the patient was on the road to recovery. The facts are: In May, 1946 this patient was examined at the Mayo Clinic in Rochester, Minnesota and Dr.

Foss, a specialist in laryngology, after biopsy, diagnosed the condition as cancer of the larynx (R. 401, 410-411, 420). Surgery was recommended but Irwin declined (R. 401, 411). In January 1947, Irwin went to the Hoxsey Clinic and Dr. Durkee diagnosed the condition as cancer of the lungs. Irwin took the black Hoxsey medicine for 6 months (R. 402). On August 11, 1948 Dr. Gammell, an ear, nose and throat specialist examined Irwin in the emergency room of the Rhode Island Hospital in Providence and was afraid the patient would die before reaching the operating room. He did stop breathing. An emergency life-saving tracheostomy was performed, a tube placed in his windpipe and the doctor was able to get him breathing again (R. 422-423). Ten days later Dr. Gammell removed the larynx (R. 424). The tumorous mass which had taken 2½ years to grow (R. 426) was sent to the hospital laboratory and was found to be cancerous (R. 428).

Mrs. Nola E. Stroud, Gov. Ex. 2, p. 8; Gov. Ex. 14, p. 12. The booklet represents this woman as having been successfully treated by the Hoxsey method of cancer of the uterus. The facts are: Mrs. Stroud was treated for cancer of the uterus in 1943 by Dr. Glen Johnson (R. 358, 361). She was given radium and X-ray therapy treatments (R. 359, 361). In January of 1944 there was no in-

dication of malignancy (R. 360). In August, 1944 Mrs. Stroud was examined at the Hoxsey Clinic by a Dr. J. P. Johnson and she took the Hoxsey treatment for more than 18 months (R. 366). While she was taking the Hoxsey drugs, Dr. J. P. Johnson of the Hoxsey Clinic thought her condition was getting worse and he told her husband that the clinic could not do anything for her. He recommended that she be taken home and have surgery performed for removal of the uterus (R. 394). Thereupon Mrs. Stroud went to see Dr. Burton (R. 380). On July 5, 1946 he operated and removed the uterus (R. 381-383) which on pathological examination was found to be cancerous (R. 388).

Jack T. Davis, Gov. Ex. 14, p. 10. The booklet represents that this patient was successfully treated by the Hoxsey drugs for cancer of the tongue. This patient, a boy of 8 years in 1948, did not have cancer when he went to the Hoxsey Cancer Clinic. Dr. C. M. Harwell removed a wart-like growth from the end of the boy's tongue in May, 1948 (R. 223). The excised growth was surrounded by normal tissue (R. 227). A sprig of malignancy was found in the excised tissue by one pathologist (R. 225) although a second pathologist, on careful dissection and microscopic examination, found it to be a benign tumor of a type that might readily be confused with cancer

(R. 232). In any event, there was no doubt that the abnormal growth was totally removed (R. 233). The tongue healed very nicely after the sutures were removed (R. 224) and only a scar remained with no swelling (R. 220). Later that month the boy was taken to the Hoxsey Clinic for treatment (R. 974). Dr. Durkee stated that the boy had cancer of the tongue when he came there (R. 938). On cross-examination Dr. Durkee stated that the tumor was still there and that there was no evidence of an incision having been made or stitches taken (R. 975). Dr. Durkee made no biopsy and based his diagnosis on the history given by the boy's father and by looking at and feeling the tongue (R. 975).

Mrs. C. A. Gatlin, Gov. Exs. 2, p. 9; 14, p. 10. The booklet suggests that this patient was successfully treated by the Hoxsey drugs for cancer of the bowel. The facts are: In June, 1936 the patient went to Dr. R. D. Gist complaining of stomach trouble. He recommended an operation to see what should be done to relieve her, but she did not have this operation. She went to the Hoxsey Clinic in November, 1936, suffering from pain in the stomach, and she stated that her condition was there diagnosed as cancer but there was no biopsy (R. 340-342). She took the Hoxsey medicines and was told in the spring of 1937 that she was cured (R. 342). In December of 1937 she was again

suffering from pain in her stomach and she again went to Dr. Gist (R. 343, 349). Dr. Gist operated and found peritonitis from a ruptured duodenal ulcer of long standing but with no evidence of malignancy (R. 350-351).

Miss Dorothy Bradberry, Gov. Ex. 14, p. 10. The booklet represents that this patient was successfully treated by Hoxsey for cancer of the breast. The facts are: In June, 1945 Miss Bradberry was treated by Dr. A. R. Thomasson (R. 520, 531), and a small tumor was removed from her right breast (R. 532). Pathological examination showed that it was not malignant (R. 533, Gov. Ex. 16). In February, 1947 she went to Dr. Ray Thomasson, son of Dr. A. R. Thomasson, and he diagnosed her complaint as mastitis of the right breast, a condition that is not malignant. She was treated with penicillin and sulfadiazine and was given X-ray treatments to alleviate the pain (R. 532, 533, 537). In March, 1947 she went to the Hoxsey Cancer Clinic and was treated for cancer without a biopsy being taken (R. 522-523).

Mrs. A. L. Ebel, Gov. Ex. 2, p. 9; Gov. Ex. 14, p. 10. The booklets represent that Mrs. Ebel was successfully treated for cancer of the bladder by the Hoxsey medicines. Dr. J. C. Alexander, a specialist in urology diagnosed Mrs. Ebel's condition as cancer of the bladder. This diagnosis was corroborated by pathological examination (R.

185). On March 18, 1942 following this diagnosis, he operated and removed the entire cancer and a half inch beyond its margins (R. 185) and applied radium (R. 186). Mrs. Ebel went to the Hoxsey Clinic about July, 1943 where she was examined by Dr. Johnson who did not use a cystoscope (R. 191). She took the Hoxsey medicine for 5 days (R. 200). Dr. C. M. Crigler, a specialist in urology, examined Mrs. Ebel a number of times using a cystoscope (R. 203). His first examination was December 31, 1942 (before she went to the Hoxsey Clinic). He observed a perfectly healed scar from the operation in March and no recurrence of any tumor in the bladder (R. 203). Dr. Crigler made other examinations on March 2, 1943, June 24, 1943, July 1, 1943 and July 7, 1947 (R. 204-205). In the examination of July 1, 1943 and July 7, 1947 the neck of the bladder or urethra was getting tight and causing a stricture of the bladder neck (R. 205). There was no evidence in any of the examinations of any recurrence of the malignant bladder condition (R. 204-205).

To summarize, the Government proved that nine persons, represented in the labeling as having been cured of cancer by the Hoxsey drugs, either did not have cancer at all (Davis, Gatlin, Bradberry, Ebel) or that their cancerous condition continued to develop while they were taking the drugs (Baker, Vinson, Doyle, Irwin, Strond).

In addition, the Government presented carefully documented case histories on seven other patients showing that all seven actually had cancer and that they were treated unsuccessfully with the Hoxsey drugs. Four of the patients died of cancer despite the treatment. They were Mrs. Pearl Harris (R. 169-171, 176, 177, 181); Mr. Dan Hedrick (R. 278, 280-282, 287, 289, Govt. Ex. 15); Carroll Grady (R. 430-432, 435, 437-438); and Mary Louise Hafertepe (R. 474, 467, 477, 479, 484). The other three patients showed no improvement. Mr. Pope (R. 259, 262, 273-276) was operated on for cancer after taking the treatment. Mrs. Brumsey (R. 486, 489, 494, 506-507, 511) was operated on for cancer while taking the Hoxsey drugs. Mr. Campbell (R. 306, 308-309, 313, 322-323, 331, 334-335) regressed under the Hoxsey drugs but improved with subsequent X-ray treatment.

Finally, the Government proved that Hoxsey himself submitted to the National Cancer Institute the names of 77 persons allegedly cured of cancer (R. 1135), but that the National Cancer Council rejected the proposal that the National Cancer Institute make a scientific evaluation of the drugs because none of the 77 cases submitted met the basic scientific requirements necessary to indicate that the drug had a beneficial effect on cancer (R. 1136-1139).

The Defense. Petitioners resisted the Government's case primarily through testimony from

laymen that they had been cured of cancer by the Hoxsey medicines (R. 577-778, 807-828, 836-902).[8] This was supplemented by the testimony of Dr. Durkee (R. 903-1083). In addition, Dr. L. E. Downs, an osteopathic physician called by the Government to prove interstate shipments of the medicines to him (R. 35-44), was questioned on cross-examination about the effectiveness of the drugs and gave some testimony favorable to petitioners (R. 45-52). Dr. E. S. Macauley, another osteopathic physician subpoenaed by the Government to prove interstate shipments but not called as a Government witness (R. 545, 549, 552), also testified for petitioners (R. 544-551).

The District Court denied the Government's prayer for injunctive relief, finding that the medicines sometimes cure cancer, that the booklets promised nothing more, and that the Government had failed to carry its burden of proof (R. 1140-1147).

The Court of Appeals reversed and remanded with instructions to grant the injunction as prayed. The court, after reading the booklets, concluded that they represent to the public that the Hoxsey drugs have cured the nine persons listed as patients[9] and that the booklets promise

---

[8] The evidence was strongly relied on by petitioners in the Court of Appeals, but their petition for certiorari fails to mention it at all in discussing the evidence. See pp. 10-11, 17-18.

[9] See pp. 6-14, *supra*.

persons suffering from cancer results at least comparable to surgery and X-ray (R. 1159, 1163-1164). Finding the evidence uncontradicted as to the falsity of the nine specific claims of cures, the court held that the Government was entitled to judgment to that extent. The court went further, holding that the testimony of laymen about cancer cures was entitled to no weight, and that the district judge's findings, supported only by the testimony of three osteopaths, two of whom did not claim to be experts in cancer and the other an interested witness, and contradicted by the other scientific evidence, were clearly erroneous. The Court of Appeals expressly recognized and applied the rule stated in *United States* v. *Gypsum* Co., 333 U.S. 364, 395 (R. 1171-1172).

ARGUMENT

1. This case involves only factual issues. The Court of Appeals, after a careful review of the entire 1156 page record (R. 1165-1171), was left with a definite and firm conviction that a serious mistake had been committed in the trial court's findings of fact. It reversed because there was clear error in the basic finding that the medicines involved are effective cancer cures. This it was authorized to do by the plain language of Rule 52(a), F.R.C.P.[10] *United States* v. *Gypsum Co.*,

[10] Under Rule 52(a), the trial court's findings of fact may be set aside when "clearly erroneous."

333 U.S. 364, 394-395; *United States* v. *Yellow Cab Co.*, 338 U.S. 338, 342; *United States* v. *Oregon Medical Society*, 343 U.S. 326, 339.

Petitioners argue that the Court of Appeals entirely disregarded the trial court's findings, simply weighed the testimony, and passed on the credibility of the witnesses (Pet. 15). A mere reading of the opinion below (R 1157-1173) shows that the court correctly understood and applied Rule 52(a). The scientific evidence for the Government was reviewed and found overwhelmingly to support the complaint. The petitioners' defense also was examined. On the entire record, the testimony of the witnesses Downs and McCauley was considered insubstantial because the doctors were not experts in cancer. They were general practitioners without special qualifications (R. 35, 44-45, 48-54, 547-548, 569). Indeed, the trial judge curtailed cross-examination of McCauley because "He doesn't offer himself here as an expert." (R. 562). And Dr. Durkee's testimony was deemed insubstantial because of his financial interest (R. 1003) and his assertion that he could diagnose cancer without a biopsy (R. 1051), contrary to all accepted scientific knowledge reflected in the record.

The Court of Appeals properly analyzed and evaluated petitioners' testimony as follows (R. 1171):

> * * * when the subject of investigation is the existence of cancer, the personal testimony of the lay sufferer is entitled to no weight, since the overwhelming preponderance of qualified opinion recognizes that not even the experts can assuredly diagnose this condition without the aid of biopsy and pathological examination. Hearsay testimony of what such a person has been told by a physician is entitled to no greater weight. Except for such testimony and the testimony of the three osteopaths, two of whom did not claim to be experts on the diagnosis and treatment of cancer, and the third of whom is a definitely interested witness who testified as to ability to diagnose contrary to all accepted scientific knowledge, the testimony on behalf of the Government in the full and complete establishment of its case of misbranding is not substantially disputed.

Petitioners seek to leave the impression that this case involves different schools of medical thought (Pet. 19-20). The record contains no evidence whatever to support the claim that this is a contest between two schools—osteopaths versus medical doctors (Pet. 20). On the contrary, it is shown that two of the three osteopaths involved have qualified to practice by examinations in the same basic sciences that are studied

by medical doctors (R. 545, 904).[11] And there is no suggestion in the record that there is anything in the science of osteopathy that would support a claim of effectiveness for the Hoxsey drugs.

Moreover, the cases cited by petitioners (Pet. 24-25) do not hold that courts are without power to determine medical facts, as well as facts in other fields. This Court, in *Reilly* v. *Pinkus,* 338 U.S. 269, 274, recently held it erroneous, even in a postal fraud proceeding, to reject informed medical judgments of Government witnesses simply because witnesses were produced by the respondent who blindly adhered to a technique discredited by reliable scientific experiences. And as the Court of Appeals pointed out (R. 1172):

> We do not have for consideration the merits even of any claimed newly discovered, or secret, drug or cure. The case involves the efficacy of only well known drugs. As a cure for cancer these have been weighed and found wanting.

It is, of course, true that findings of a trial judge may be disturbed on appeal only in unusual circumstances. But it is submitted that such circumstances exist when a trial court has found, on the basis of testimony by laymen and interested

---

[11] Dr. Downs did not take the basic sciences examination because he was practicing before the examination became a state requirement (R. 44-45).

or uninformed practitioners, that a group of herbs and potassium iodide in a liquid medicine will cure cancer. The well established medical facts show that the finding is clearly erroneous.

2. Petitioners are asking this court to review the review which the Court of Appeals has already given to the record in the District Court. They seek to minimize the Government's case and to show that Dr. Durkee was better qualified as an expert in cancer than all of the Government witnesses (Pet. 16-19). But this Court does not make an "independent review of the review" below. *National Labor Relations Board* v. *Pittsburgh S. S. Co.*, 340 U. S. 498, 502-503. As in that case, the Court of Appeals made a painstaking review of the findings and found them unsupported by substantial evidence. The decision in the Court of Appeals turned solely on an evaluation of the entire record, and no legal issues for certiorari are involved.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

WALTER J. CUMMINGS, JR.,
Solicitor General.
CHARLES B. MURRAY,
Assistant Attorney General.
BEATRICE ROSENBERG,
Attorney.

WILLIAM W. GOODRICH,
Assistant General Counsel,
Federal Security Agency.

JANUARY 1953.

☆U.S. GOVERNMENT PRINTING OFFICE 1953—236845 P.O. 931